

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Request of Lockheed Martin Corporation and)
Warburg, Pincus & Co. for Review of the)
Transfer of the Lockheed Martin)
Communications Industry Services Business)
from Lockheed Martin Corporation to an)
Affiliate of Warburg, Pincus & Co.)

CC Docket

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF LOCKHEED MARTIN CORPORATION
AND WARBURG, PINCUS & CO.**

J.G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2818

Counsel to Lockheed Martin
Corporation

William H. Janeway
General Partner
Warburg, Pincus & Co.
466 Lexington Avenue
New York, New York 10017
(212) 878-0660

Cheryl A. Tritt
Frank W. Krogh
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
(202) 887-1500

Counsel to Lockheed Martin IMS
Corporation

Philip L. Verveer
Michael G. Jones
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036-8000
(202) 328-8000

Counsel to Warburg, Pincus & Co.

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SUMMARY

The initial comments overwhelmingly support the Amended Request and Supplemental Amended Request of Lockheed Martin Corporation and Warburg, Pincus & Co. (collectively, "the Parties") for approval of the transfer of the Lockheed Martin Communications Industry Services ("CIS") business to NeuStar, Inc. ("NeuStar"). Only Mitretek Systems, the unsuccessful applicant for the role of North American Numbering Plan Administrator ("NANPA"), opposes the transfer. Mitretek's arguments are both incorrect as a matter of corporate law and inapplicable to the unique regulatory and commercial environment in which the NANPA and Local Number Portability Administrator ("LNPA") operate.

Commenters representing the local exchange industry, the wireless industry, most of the long distance industry, a state regulatory commissioner and the North American Numbering Council ("NANC") all support expeditious review and approval of the requested transfer. The U.S. Chamber of Commerce, citing the importance of the NANPA to the national economy, also supports the Parties' request. Mitretek, however, argues that the CEO and Chairman of the NeuStar Board and the independent directors, as well as the trustees of the voting trust, are not truly independent of Warburg Pincus and therefore owe a fiduciary duty to Warburg Pincus, thereby undermining their neutrality.

Mitretek's arguments are riddled by factual errors. For example, it alleges that Warburg Pincus, on its own, could add more trustees to administer the voting trust that will have voting control over NeuStar's shares, but paragraph 10 of the draft Trust Agreement attached to the Amended Request demonstrates otherwise. Mitretek also jumps to conclusions not supported by the facts in the record. For example, it argues that selection of any future CEO/Chairman by the NeuStar Board is tantamount to control by Warburg Pincus. Such a selection, however, would be made by majority vote of the remaining four members of the Board, which means that at least one of the two independent directors would have to agree to the selection. It is especially noteworthy in this regard that Mitretek has no criticism of the initial independent directors, Henry Geller and Dr. Kenneth A. Pickar, each of whom also will have a significant role in the

selection of the other's successor for a full three-year term. Mitretek has failed to demonstrate that Warburg Pincus will control the NeuStar Board or the trustees selected by the Board.

Mitretek's argument that Warburg Pincus' role in selecting the trustees and independent directors will obligate those fiduciaries to pursue the overall economic interests of Warburg Pincus rather than the interests of "the general public," is bizarre. Directors' and trustees' fiduciary duties are not owed to the general public. Rather, the directors owe fiduciary duties to NeuStar and *all* of its shareholders, and the trustees owe fiduciary duties to *all* of the beneficiaries of the shares held in trust, which also require the directors and trustees to preserve NeuStar's value.

Moreover, such fiduciary duties owed to NeuStar's shareholders do not translate into owed duties to those shareholders' other interests. Fiduciary duties are owed to the shareholders solely in their capacity as NeuStar shareholders, which requires the directors and trustees to ensure the success of NeuStar. Such success, in turn, requires that NeuStar remain completely neutral under Section 52.12(a)(1) of the Commission's rules, since failure to do so would result in its termination as the NANPA and LNPA. Mitretek's conclusion that the directors and trustees will be under no obligation to ensure NeuStar's neutrality thus completely ignores the Commission's neutrality requirements as well as the continuing oversight of the NANPA and LNPA by the NANC and this Commission.

Because Mitretek fails to credibly challenge the independence of the directors and trustees, the Parties request that the Commission expeditiously review and approve the Amended Request and Supplemental Amended Request.

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Industry Services Business from Lockheed Martin)	
Corporation to an Affiliate of Warburg, Pincus & Co.)	

**REPLY COMMENTS OF LOCKHEED MARTIN CORPORATION
AND WARBURG, PINCUS & CO.**

Lockheed Martin Corporation ("Lockheed Martin") and Warburg, Pincus & ("Warburg Pincus") (collectively, "the Parties"), hereby reply to the initial comments on the proposed transfer of the Lockheed Martin Communication Industry Services ("CIS") business to NeuStar, Inc. ("NeuStar"), to be 59 percent controlled by an irrevocable, independent voting trust.¹ All but one of the commenters, representing a wide range of telecommunications industry constituencies, support the transfer of CIS to NeuStar.

The sole opponent of the proposed transfer is Mitretek Systems ("Mitretek"), the unsuccessful applicant for the role of North American Numbering Plan Administrator ("NANPA"). Mitretek argues that NeuStar's restructured ownership is not sufficiently independent from Warburg Pincus, as a matter of corporate governance, to meet the Commission's neutrality requirements. As explained below, Mitretek's pronouncements on corporate governance and the nature of fiduciary duties are both incorrect as a matter

¹ The Parties' proposal is contained in their Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business (Aug. 16, 1999)("Amended Request") and Supplemental Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business (Aug. 26, 1999)("Supplemental Amended Request").

of basic corporate law and inapplicable to the unique regulatory and administrative context presented here. Particularly in view of the oversight provided by the North American Numbering Council ("NANC"), one of the parties supporting the requested transfer, the NeuStar ownership structure and other safeguards are more than sufficient to ensure the independence and neutrality of CIS in its role as NANPA and Local Number Portability Administrator ("LNPA") for all seven U.S. local number portability ("LNP") regions and the Canadian Consortium. Accordingly, the Commission should expeditiously complete its review and approve the requested transfer.

I. INTRODUCTION AND BACKGROUND

As explained in their Amended Request and Supplemental Amended Request, the Parties agreed to restructure the entity that will acquire CIS in order to provide further assurance of its adherence to the Commission's neutrality rules.² In place of the ownership structure as originally proposed,³ the voting shares in NeuStar will be controlled 59 percent by an irrevocable, independent voting trust, 28.1 percent by NeuStar management, 9.9 percent by Warburg, Pincus Equity Partners ("WPEP") and three percent by Lockheed Martin. The beneficial ownership of the NeuStar equity subject to the trust will be held by WPEP and NeuStar management. A copy of the draft Trust Agreement was attached to the Amended Request.

² See *Administration of the North American Numbering Plan*, 11 FCC Rcd 2588 (1996); *Administration of the North American Numbering Plan, Toll Free Service Access Codes*, 12 FCC Rcd 23040 (1997) ("NANPA Selection Order"); 47 C.F.R. § 52.12(a)(1).

³ See Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business, Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business from Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co., CC Docket No. 92-237, NSD File No. 98-151 (Dec. 21, 1998) ("Original Request").

No more than two of the five-member NeuStar Board of Directors ("Board") will be Warburg Pincus representatives. The Chief Executive Officer ("CEO") of NeuStar always will be the Chairman of the Board. There will be two independent directors, neither of whom will be employed by, or have a business or familial relationship with, Warburg Pincus, WPEP or NeuStar management. As an indication of the caliber of individuals who will serve as the independent directors, Dr. Kenneth A. Pickar, a physicist with a distinguished academic and business career, and Henry Geller, formerly general counsel of the Commission and the Assistant Secretary for Communications and Information and Administrator of the National Telecommunications and Information Administration in the U.S. Department of Commerce, have agreed to serve on the Board.

When any one of the initial independent directors is replaced, the Chairman of the NeuStar Board and the remaining independent director will nominate a successor and submit the nomination to the NeuStar Board for confirmation. Any successor independent director nominated and confirmed by the Board for a full three-year term also must be approved by a majority of the voting shares.

The trust will be administered by two independent trustees, who will be unaffiliated by employment or business or familial relationships with Warburg Pincus, WPEP or NeuStar management. The Commission will receive timely notification of any appointment or removal of a trustee. Warburg Pincus, WPEP and NeuStar management will have no control over the trustees' votes on day-to-day operational or strategic business decisions of NeuStar. It also should be noted that the Parties strengthened the Code of Conduct, as described in the Supplemental Amended Request, to provide even more insulation for the CIS business.

II. COMMENTERS STRONGLY SUPPORT THE PROPOSED TRANSFER OF CIS

All of the commenters, other than Mitretek, endorse the requested transfer. The United States Telephone Association, representing the local exchange carrier industry, "encourages the Commission to review and approve the Amended Request expeditiously. Speedy Commission action is critical for continuity in CIS' performance of its role as the NANPA and ... LNPA."⁴ AT&T Corp. and MCI WorldCom, Inc., representing over 80 percent of the lines served by the interexchange industry, also support the request.⁵ AT&T notes that "[a] lengthy review that introduces uncertainty into the NANPA's operations would make the long-range planning of AT&T and other carriers more difficult, and could undermine efficiency within the entire telecommunications industry."⁶

The NANC concludes "that this new proposal is substantially better than the previous proposal that it found to be adequate, and that the business arrangement set forth in the Amended Request fully satisfies the needs of the telecommunications industry for a neutral third party numbering administrator."⁷ It should be noted that, since the filing of the Parties' Original Request in December 1998, the NANC has expended considerable time and effort meeting with the Parties and reviewing their proposals.

Commissioner Majkowski of the Colorado Public Utilities Commission, who is one of the three members of the National Association of Regulatory Utilities Commissioners on the NANC, also "support[s] the expeditious treatment of the amended

⁴ Comments of the United States Telephone Association at 2 (Sept. 7, 1999).

⁵ Comments of MCI WorldCom, Inc. at 2-3 (Sept. 7, 1999); Letter from James W. Spurlock, Government Affairs Director, AT&T, to Magalie Roman Salas, Secretary, Federal Communications Commission (Sept. 7, 1999)("Spurlock Letter").

⁶ Spurlock Letter at 2.

⁷ Letter from Alan C. Hasselwander, Chairman, North American Numbering Council, to Lawrence E. Strickling, Chief, Common Carrier Bureau, Federal Communications Commission (Aug. 30, 1999)("Aug. 30 NANC Letter").

request as well as the proposed sale as discussed in the document ... as amended and supplemented.”⁸ The Cellular Telecommunications Industry Association “urges the Commission to resolve this important matter with all deliberate speed.”⁹ Beyond the telecommunications industry, the U.S. Chamber of Commerce points out that because of the “centrality of the NANPA’s functions to the U.S. economy,” “[e]xpeditious review and approval of this proposal would further the interests not only of the U.S. telecommunications industry, but also of U.S. industry overall....”¹⁰

III. MITRETEK HAS OFFERED NO REASON TO DENY THE REQUESTED TRANSFER

The sole dissenter, Mitretek, bases its opposition not on any telecommunications legal or regulatory rationale, but, rather, on concepts of corporate governance set forth in the comments of Lynn A. Stout, a professor of securities regulation and corporate law retained by Mitretek. Mitretek, partially supported by Professor Stout, brings a variety of charges against the ownership structure and the Code of Conduct, essentially based on the claim that NeuStar’s Chief Executive Officer (“CEO”) and Chairman of the NeuStar Board, the independent directors, and the trustees of the voting trust, are not truly independent of Warburg Pincus. Mitretek incorrectly concludes that those persons

⁸ Letter from Vincent Majkowski, Commissioner, Colorado Public Utilities Commission, to Magalie Roman Salas, Secretary, Federal Communications Commission (Sept. 3, 1999).

⁹ Letter from Michael F. Altschul, Vice President/General Counsel, Cellular Telecommunications Industry Association, to Lawrence E. Strickling, Chief, Common Carrier Bureau, Federal Communications Commission (Sept. 3, 1999).

¹⁰ Letter from Thomas J. Donohue, President and Chief Executive Officer of the Chamber of Commerce of the United States of America, to Magalie Roman Salas, Secretary, Federal Communications Commission 2 (Sept. 3, 1999).

therefore owe a fiduciary duty to Warburg Pincus, rather than to NeuStar as a separate entity, or to NeuStar shareholders as a group.¹¹

The Parties note at the outset that Mitretek's criticisms of what it characterizes as the "many iterations submitted during the past year" of the Parties' proposal to transfer the CIS business are misplaced.¹² Given the novelty of this situation and the lack of explicit Commission procedures governing the transfer of the entity previously approved as the NANPA, Parties concluded that their efforts to structure a new independent entity to own CIS would benefit from consultations with the Commission, the NANC and members of the telecommunications industry. The Parties' efforts to respond to the various constituencies affected by the proposed transaction constitute one of the great strengths of their current proposal. The response from the industry, as reflected in the comments noted above -- particularly the NANC's statement that the current proposal "is substantially better than the previous proposal"¹³ -- confirms the Parties' view that this process has been productive.

As discussed further below, the Parties will continue to consider whether they can take additional steps to ensure confidence in NeuStar's neutrality.

A. Mitretek Misstates Basic Facts In The Record

Mitretek's presentation is riddled with factual errors. It assumes that the two independent directors and the trustees will be the same individuals,¹⁴ despite explicit references in the Parties' pleadings to the "four independent fiduciaries" serving in those positions¹⁵ and the separate (albeit roughly similar) procedures for naming the

¹¹ See Comments of Professor Lynn A. Stout (Sept. 3, 1999), and Comments of Mitretek Systems in Response to Public Notice DA 99-1647 (Released August 17, 1999) at 3-5 (Sept. 7, 1999) ("Mitretek Comments").

¹² See, e.g., Mitretek Comments at 3.

¹³ Aug. 30 NANC Letter.

¹⁴ Mitretek Comments at 4.

¹⁵ Supplemental Amended Request at 2.

independent directors and the trustees.¹⁶ Mitretek also claims that nothing precludes Warburg Pincus from adding more trustees to the voting trust,¹⁷ but paragraph 10 of the draft Trust Agreement attached to the Amended Request states that it may be amended only by unanimous action of the trustees, Warburg Pincus and a majority of NeuStar management, “provided that such amendment is reviewed and approved by the FCC if necessary.”¹⁸ Warburg Pincus thus could not add trustees at will, as Mitretek alleges. Nevertheless, the Parties are willing to add a provision to the Trust Agreement explicitly prohibiting any increase in the number of trustees.

Mitretek also claims that Jeffrey Ganek, NeuStar’s proposed CEO, is a Warburg Pincus nominee to the NeuStar Board.¹⁹ That obviously is not true, since the entire CIS management structure is being transferred intact from Lockheed Martin to NeuStar, and Mr. Ganek is currently at the head of CIS as its Senior Vice President and Managing Director and will remain at the head of NeuStar as its Chief Executive Officer. He certainly was not selected as head of CIS by Warburg Pincus. It is the wholesale transfer to NeuStar of CIS’ current “team” that was meant to be (and has proven to be, at least to everyone but Mitretek) a critically important feature of the Parties’ proposal.

B. Mitretek Draws Negative Inferences From The Record

Mitretek also jumps to conclusions based on what it views as omissions in the safeguards proposed by the Parties. Mitretek states that there is nothing to prevent Warburg Pincus from “packing” the NeuStar Board and argues that this possibility

¹⁶ For example, successor independent directors serving full three-year terms must be approved by a majority of the voting shares. Such a requirement would make no sense in the case of the trustees, since they exercise a majority of the voting shares.

¹⁷ Mitretek Comments at 4.

¹⁸ Amended Request, Exh. B.

¹⁹ Mitretek Comments at 4; Stout Comments at 4.

facilitates its control of NeuStar.²⁰ It is clearly the intention of the Parties, however, to maintain the corporate structure described in the Amended Request and Supplemental Amended Request. Indeed, the purpose of proposing a specific structure was to inform the Commission of the exact business arrangements that would be in place for CIS' entire term as NANPA and LNPA. The NeuStar Board will remain a five-member Board, with the CEO as Chairman, no more than two Warburg Pincus directors and at least two independent directors. The Parties intend that the Commission rely on that commitment in reviewing the proposed transfer and will embody such a commitment in the appropriate corporate documents.

Mitretek adds that the Parties have not discussed the appointment of future CEO/Chairmen, thus leaving open the possibility of selection by the Board, which, it argues, is tantamount to selection by Warburg Pincus.²¹ Mitretek is correct that the Board will select any replacement for the current CEO/Chairman, if that becomes necessary, as is the case in most corporate governance provisions formulated under Delaware law. Such a selection would have to be made by majority vote of the remaining four members of the Board, which means that three of the four directors would have to agree, thus requiring the vote of at least one of the independent directors. Accordingly, Warburg Pincus would not be able to control the selection of a new CEO/Chairman.

It is significant in this regard that Mitretek has not uttered one word of criticism of either of the initial independent directors, Mr. Geller and Dr. Pickar, each of whom will have an important role in the selection of the other's successor, as they, or their successors, will have an important role in the approval of any future CEO/Chairman of NeuStar. Mitretek's scenario of Warburg Pincus control of the NeuStar Board, and, through the Board, of the trustees, necessarily founders on the unimpeached integrity of

²⁰ Mitretek Comments at 4; Stout Comments at 4.

²¹ Mitretek Comments at 4; Stout Comments at 3.

the initial independent directors. Mitretek speaks of Warburg Pincus' "veto" power over future independent directors and trustees,²² but Mr. Geller and Dr. Pickar have the same "veto," and any exercise of such a veto by any director will certainly draw the attention of the NANC and the Commission. The notion that all directors and trustees will be beholden to Warburg Pincus thus ignores the obstacles to the exercise of any favoritism toward Warburg Pincus by those fiduciaries.

Finally, Mitretek claims that Warburg Pincus can control the trustees' compensation and, thereby, the trustees themselves.²³ To assuage Mitretek's concerns, the Parties will modify the draft Trust Agreement to guarantee at the outset a specific level of compensation for the trustees for the life of the trust, so that the trustees would be free of any such potential coercion.²⁴

C. Mitretek Ignores The Impact Of The Commission's Neutrality Rules On The Directors' And Trustees' Fiduciary Duties

The errors in Mitretek's analysis also lead to its bizarre conclusion that because of Warburg Pincus' role in selecting the trustees and Board members, including the independent directors, those fiduciaries are obligated to pursue the economic interests of Warburg Pincus, rather than "the public interest responsibilities related to the NANPA."²⁵ For instance, Professor Stout argues that:

²² Mitretek Comments at 4; Stout Comments at 2-3.

²³ Mitretek Comments at 4; Stout Comments at 2.

²⁴ In any event, even if Mitretek's hypothesis that Warburg Pincus would attempt to manipulate the trustees' compensation were true, the Commission presumes that fiduciaries will fulfill their obligations in the absence of specific evidence establishing that violation of those duties is likely. *See* Lockheed Martin Corporation, Regulus, LLC and COMSAT Corporation, Application for Transfer of Control of COMSAT Government Systems, Inc., Holder of an International Section 214 Authorization and Earth Station Licenses E960186 and E960187, File Nos. SE5-T/C-19981016-01388(2) and ITC-T/C-19981016-00715, FCC 99-237, at ¶ 37 (Sept. 15, 1999).

²⁵ Mitretek Comments at 5.

The Amended Request suggests ... that “the trustees will have a fiduciary duty to all the beneficiaries of the trust, so their only incentive is to ensure the ongoing success and neutrality of NeuStar.” This statement is not correct. Under the terms of the proposed corporate restructuring and trust, NeuStar’s directors and trustees do not owe fiduciary duties to the general public. Rather, they would owe fiduciary duties primarily to NeuStar’s shareholders, including Warburg Pincus. NeuStar’s directors and trustees accordingly would be under no obligation to ensure NeuStar’s neutrality Nor would the directors and trustees be precluded from favoring a particular beneficiary, such as Warburg Pincus, over other beneficiaries where this can be done without affirmatively harming the other beneficiaries.²⁶

Thus, Mitretek’s position rests on two fundamental errors of corporate law. First, Mitretek offers the proposition that the only protection against violations of neutrality is the assumption that the Board and trustees “owe fiduciary duties to the general public.” That is not what is required to ensure NeuStar’s neutrality, however. Rather, the directors owe a fiduciary duty to NeuStar and *all* of its shareholders, including minority shareholders, and thus to the continuing value of its assets. The trustees owe a fiduciary duty to the beneficiaries of the NeuStar shares held in trust, including the non-Warburg Pincus beneficiaries, which duty also requires them to ensure the retention of the value of NeuStar.

The second error is the flawed syllogism that underlies Mitretek’s entire presentation, namely that fiduciary duties owed to “NeuStar’s shareholders, including Warburg Pincus,” somehow translate into fiduciary duties to those shareholders’ other interests, which undermines the directors’ and trustees’ obligations to NeuStar. A fiduciary duty to NeuStar and its shareholders, however, requires a focus on the success of NeuStar as a stand-alone entity, independent of any other interests that NeuStar’s shareholders may have. The duty is owed to the shareholders solely in their capacity as NeuStar shareholders.

NeuStar’s success requires that it remain, in appearance and in substance, completely neutral. Section 52.12(e) provides for the termination of the NANPA’s term

²⁶ Stout Comments at 4.

of administration if the Commission finds that the NANPA has failed to comply with the neutrality criteria set forth in Section 52.12(a) and has so advised it, and the NANPA has failed to take corrective action.²⁷ Thus, failure to remain neutral would pose a threat to all shareholders' investments in NeuStar and accordingly must be the focus of the directors' and trustees' fiduciary duties. In other words, the Commission's neutrality requirements shape and define the NeuStar directors' and trustees' fiduciary duties, not theoretical postulates of corporate governance in a vacuum.

Only by ignoring this regulatory context can Professor Stout conclude that "NeuStar's directors and trustees accordingly would be under no obligation to ensure NeuStar's neutrality in numbering plan administration." The same flaw underlies Professor Stout's statement that "[n]or would the directors and trustees be precluded from favoring a particular beneficiary, such as Warburg Pincus, over other beneficiaries where this can be done without affirmatively harming the other beneficiaries." This is true as far as it goes. However, any favoritism (to either Warburg or NeuStar management) that violated neutrality necessarily would harm the value of the other party's NeuStar shares. Simply put, under the Commission's neutrality rules, "favoring a particular beneficiary" can *never* "be done without affirmatively harming the other beneficiaries," since any such favoritism will sabotage the CIS business, to the detriment of all NeuStar shareholders. It would be difficult to imagine a clearer, more precisely focused fiduciary duty.

Mitretek also suggests that, irrespective of the trustees' independence, too many "fundamental" matters are removed from the scope of their discretion, such as the merger or consolidation of NeuStar with another entity or the lease of assets, which are left to the discretion of the beneficial owners of the voting shares.²⁸ In fact, however, any partiality or favoritism in administering the NANPA would not be manifested in those types of

²⁷ 47 C.F.R. § 52.12(e).

²⁸ Mitretek Comments at 5.

actions. Rather, such favoritism -- such as making more numbering resources available to one carrier or set of carriers than is appropriate -- would most likely occur in the course of the day-to-day operations of the NANPA, which are left entirely within the trustees' discretion.

Moreover, the trustees retain unfettered discretion to vote the trust shares on the vast majority of matters that could be subject to a shareholder vote, including the election of independent directors for full three-year terms, amendments to NeuStar's certificate of incorporation, executive compensation or any matters requiring a shareholder vote under tax or other regulations or under any contract, indenture, debt instrument or otherwise. The trustees also may bring a derivative action under Delaware law on behalf of all of the shareholders against the directors and management if they are acting against the interests of the shareholders. Thus, the trustees exercise vast discretion, and are empowered with considerable rights under state law, in voting the trust shares, which helps to ensure their independence as a check on the Board and management.

D. Mitretek's Discussion Of The Code Of Conduct Is Misplaced

Mitretek's discussion of the Code of Conduct suggests that it did not review the current version of the Code.²⁹ It claims that the Code, "rather than assuring a high standard of conduct, raises confusion and contradiction."³⁰ Mitretek questions the second paragraph of the Code, since it seems to suggest, under Mitretek's reading, that NeuStar management will not have access to any proprietary information of the carriers served by NeuStar, even information needed to perform CIS' NANPA activities.³¹ The second

²⁹ Mitretek's reliance on an obsolete version of the Code is surprising, since it cites both the Amended Request and the Supplemental Amended Request (*see* Mitretek Comments at 3, n. 3), to which updated versions of the Code were attached.

³⁰ Mitretek Comments at 5.

³¹ *Id.* at 5-6.

paragraph of the Code attached to the Supplemental Amended Request, however, clearly makes an exception for the “access of employee-shareholders of NeuStar that is incident to the performance of NANPA and LNPA duties.”³² Mitretek also charges that the fifth paragraph of the Code, by restricting its coverage to telecommunications service providers in which any NeuStar shareholders have an attributable interest, would allow employees of some telecommunications service providers that use numbering resources to be employed by the NANPA.³³ Again, the version of the Code attached to the Supplemental Amended Request clearly prohibits employees *of any company that is a telecommunications service provider* from being employed simultaneously by NeuStar.³⁴

Mitretek’s remaining comments on the Code are no more meaningful. Mitretek quibbles that no protection is provided by the requirement that “NeuStar shareholders will guard their knowledge and information about NeuStar’s operations as they would their own proprietary information.”³⁵ It argues that the owner of proprietary information has absolute discretion as to what to do with that information and that no fiduciary responsibility is imposed by this provision on NeuStar shareholders. The Code paragraph to which Mitretek refers, however, clearly prohibits any sharing of information about NeuStar’s operations with employees of any telecommunications service provider.³⁶ In the context of that prohibition, the next sentence in the paragraph, requiring NeuStar shareholders to guard such information as they would their own, simply supports that prohibition by requiring the type of confidential treatment that such information ordinarily enjoys.

³² Supplemental Amended Request, Exh. A.

³³ Mitretek Comments at 6.

³⁴ Supplemental Amended Request, Exh. A. ¶ 5.

³⁵ Mitretek Comments at 6.

³⁶ See Supplemental Amended Request, Exh. A, ¶ 4.

Finally, Mitretek complains that the neutrality reviews required by the Code are vague. It argues that the “reviewer” is not assured adequate access to all information necessary for the review and that the reviews cannot possibly be an effective check on NeuStar, since the results of the reviews will be deemed confidential and proprietary to NeuStar and its shareholders.³⁷ Mitretek conveniently ignores that the results will be provided to the limited liability companies (“LLCs”) administering regional LNP issues, the NANC and the Commission. Moreover, the analyst performing the neutrality review will be mutually agreed upon by NeuStar and those entities.³⁸ Such outside control at the outset and at the conclusion of the reviews ensures that NeuStar could not deny the reviewer reasonable access to whatever information the reviewer deemed necessary. Mitretek’s failure to raise any serious questions about the Code is a further demonstration of its value in ensuring NeuStar’s neutrality.³⁹

CONCLUSION

The weakness of Mitretek’s opposition confirms the views of NANC and the other commenters that the proposed sale will serve the public interest. The NANPA’s neutrality obligations impose fiduciary duties upon NeuStar’s directors and the trustees to take all steps necessary to preserve NeuStar’s independence, regardless of the NeuStar shareholders’ other interests. This laser-like focus on the interests of NeuStar as a stand-alone entity reinforces the impartiality of the independent directors and trustees under the proposed ownership structure, which, in turn, is reinforced by the strict Code of Conduct.

³⁷ Mitretek Comments at 6.

³⁸ See Supplemental Amended Request, Exh. A, ¶ 9.

³⁹ It should be noted that MCI WorldCom specifically cited the Code as a basis for its support of the proposed transfer. See MCI WorldCom Comments at 3.

Lockheed Martin and Warburg Pincus accordingly request that the Commission expeditiously grant the Amended Request and Supplemental Amended Request.

Respectfully submitted,

By: J.G. Harrington *ot*
J.G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave., N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2818

Counsel to Lockheed Martin
Corporation

By: Cheryl A. Tritt
Cheryl A. Tritt
Frank W. Krogh
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006-1888
(202) 887-1500

Counsel to Lockheed Martin IMS
Corporation

By: William H. Janeway *ot*
William H. Janeway
General Partner
Warburg, Pincus & Co.
466 Lexington Avenue
New York, New York 10017
(212) 878-0660

By: Philip L. Verveer *ot*
Philip L. Verveer
Michael G. Jones
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036-8000
(202) 328-8000

Counsel to Warburg, Pincus & Co.

September 17, 1999

CERTIFICATE OF SERVICE

I, James S. Bucholz, do hereby certify that the foregoing **Reply Comments** were served on this 17th day of September, 1999, to the following by first-class mail, postage prepaid or by hand delivery:

Chairman William E. Kennard*
Federal Communications Commission
445 12th Street, S.W. Ste 8B201
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth*
Federal Communications Commission
445 12th Street, S.W. Ste 8A302
Washington, D.C. 20554

Commissioner Susan Ness*
Federal Communications Commission
445 12th Street, S.W. Ste 8B115
Washington, D.C. 20554

Blaise A. Scinto*
Deputy Division Chief
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. 6th Floor
Washington, D.C. 20554

Jeannie Grimes*
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. 6th Floor
Washington, D.C. 20554

Lawrence Strickling*
Chief - Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. 6th Floor
Washington, D.C. 20554

Jordan Goldstein*
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. 6th Floor
Washington, D.C. 20554

Commissioner Gloria Tristani*
Federal Communications Commission
445 12th Street, S.W. Ste 8C302
Washington, D.C. 20554

Commissioner Michael Powell*
Federal Communications Commission
445 12th Street, S.W. Ste 8A204
Washington, D.C. 20554

Yog Varma*
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. 5th Floor
Washington, D.C. 20554

Diane Harmon*
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. 6th Floor
Washington, D.C. 20554

Tejal Mehta*
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. 6th Floor
Washington, D.C. 20554

John R. Hoffman*
Chairman, North American Numbering Council
c/o Jeannie Grimes
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. 6th Floor
Washington, D.C. 20554

Anne F. La Lena
Henry G. Hultquist
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Vincent Majkowski
Commissioner
State of Colorado
Public Utilities Commission
1580 Logan Street, Office Level 2
Denver, Colorado 80203

International Transcription Services
1231 20th Street, N.W.
Washington, D.C. 20036

Lynn A. Stout
Professor of Law
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001

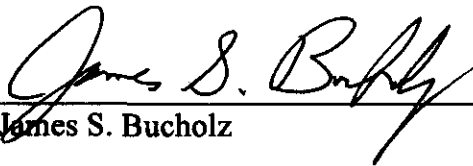
H. Gilbert Miller
Vice President
Center for Telecommunications and
Advanced Technology
Mitretek Systems
7525 Colshire Drive
McLean, Virginia 22102

James W. Spurlock
Government Affairs Director
AT&T
1120 20th Street, N.W. #1000
Washington, D.C. 20036

Lawrence E. Sarjeant
John W. Hunter
United States Telephone Association
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005

Thomas J. Donohue
President and Chief Executive Officer
Chamber of Commerce of
the United States of America
1615 H Street, N.W.
Washington, D.C. 20062-2000

Michael F. Altschul
Vice President/General Counsel
Cellular Telecommunications Industry Association
1250 Connecticut Ave., N.W., Suite 800
Washington, D.C. 20036


James S. Bucholz